

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MILDRED NICOLE BRYANT,

Charging Party,

v.

PERALTA COMMUNITY COLLEGE DISTRICT,

Respondent.

Case No. SF-CE-2145-E

PERB Decision No. 1418

February 26, 2001

Appearance: Mildred Nicole Bryant, on her own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Mildred Nicole Bryant (Bryant) of a Board agent's dismissal (attached) of her unfair practice charge.

The charge alleged that the Peralta Community College District violated section 3543.5 (a) and (b) of the Educational Employment Relations Act (EERA)¹ by failing to respond to the

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

parties' grievance arbitration procedures and by issuing an improper performance evaluation to Bryant.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters and Bryant's appeal. The Board finds that because Bryant failed to meet her burden of supplying sufficient facts to show that the alleged unlawful conduct occurred within six-months of the filing date of her charge, it must be dismissed as untimely.

DISCUSSION

Bryant's charge stated, in its entirety:

Failure to respond to grievance arbitration procedures.

Violation of evaluation process. Another classified staff person (Dena Semmons) was allowed to perform, conduct an evaluation of me. She was not my 1st level manager. Nor was the evaluation period valid.

EERA section 3541.5 (a) (1) provides that the Board shall not, "issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The Board has held that it is the charging party's burden to demonstrate the charge has been timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024.) As Bryant's charge failed to provide any dates, it failed to supply sufficient facts to show that the alleged unlawful conduct occurred within six-months of the filing of the charge.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

In her appeal, Bryant requests that the Board consider new supporting evidence offered for the first time in her appeal. Consideration of new supporting evidence on appeal is controlled by PERB Regulation 32635² which provides, in pertinent part:

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

Interpreting this regulation, the Board has been reluctant to find that good cause existed to allow a party to raise new allegations or new evidence for the first time on appeal. The reason for this reluctance is stated in South San Francisco Unified School District (1990) PERB Decision No. 830:

The purpose of PERB Regulation 32635(b) is to require the charging party to present its allegations and supporting evidence to the Board agent in the first instance, so that the Board agent can fully investigate the charge prior to deciding whether to issue a complaint or dismiss the case.

When a party has the opportunity to cure defects in a prima facie case at earlier stages and does not do so, the Board is reluctant to allow a party to raise such facts or evidence later. (Oakland Education Association (Freeman) (1994) PERB Decision No. 1057.)

In support of her appeal, Bryant states that, "Due to a series of unavoidable and uncontrollable circumstances" she was forced to move out of state and relocate to East Carondelet, Illinois. Bryant claims in her appeal that she, "communicated (by phone) my situation to Ms. Tammy Samsel, Regional Director of the San Francisco office, during a conversation with her sometime in July." There is only one reference in the record of a phone call in July of 2000. Board Agent Tammy Samsel noted in her August 1, 2000 warning letter to Bryant that a phone call was placed to Bryant on July 12, 2000. The purpose of this call was

² PERB regulations are codified at California Code of Regulation, title 8, section 31001, et seq.

to let Bryant know that her charge did not state a prima facie violation of EERA and that more information was needed. Had Bryant communicated her impending move out of state to the Board agent during this phone call on July 12, 2000 or any other time in July, it would be reflected in the record. Bryant's claim that she informed the Board agent of her impending move is not supported by the record.

Bryant claims she did not receive the Board agent's August 1, 2000, warning letter until after her charge was dismissed by the Board agent. Bryant claims she had her mail forwarded to Illinois which resulted in a one-week to 14-day delay in receiving her mail. Even if Bryant did not receive the August 1, 2000, warning letter until she reached Illinois on August 11, Bryant has not demonstrated good cause to allow for the consideration of new evidence to support her charge. The warning letter was mailed from the Board's San Francisco regional office on Tuesday, August 1, 2000. Bryant did not move out of state until Sunday, August 6, 2000. Bryant provided no indication in her appeal as to when she submitted her change of address card to the Post Office, no effective date for the forwarding of her mail, and most importantly, no reason why she could not have apprised the Board agent of her new address or even that she was moving.

In light of the July 12, 2000, phone call wherein the Board agent explained that Bryant's charge was deficient, Bryant's failure to keep PERB informed of her current address and to communicate with PERB in an effective and timely manner does not constitute good cause under PERB Regulation 32635(b). The remainder of her appeal is an attempt to overcome deficiencies in timeliness and establish a prima facie case for her charge. This portion of Bryant's appeal is not addressed as no good cause exists to consider the new supporting evidence on appeal.

ORDER

The unfair practice charge in Case No. SF-CE-2145-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Amador and Whitehead joined in this Decision.